hardly be said, without taking into consideration the circumstances of the particular case, that such a plant would necessarily fall within the class of establishments intended by the grantor to be excluded. It is submitted, therefore, that the decision in the case of *Bates Machine Co.* v. *Trenton & N. B. R. R. Co.*, supra, does not conclude the question which was before the court for decision in the principal case.

DIVORCE—JURISDICTION OF PERSON—RESIDENCE OF PLAINTIFF.—A statute of Missouri requires proceedings in divorce cases to be held in the county where plaintiff resides. Petitioner, who was domiciled in a certain county, alleged in his petition for divorce that he was a resident of the county where suit was brought. At the trial of the cause, upon proof that petitioner was a resident of another county, the suit was dismissed, though the question of jurisdiction was not raised in abatement. *Held*, (BLAND, P.J., dissenting), the suit was properly dismissed. *Lagerholm* v. *Lagerholm* (1908), — Mo. App. —, 112 S. W. 720.

The opinion of the majority in the principal case is in accord with the holding of *Pate* v. *Pate*, 6 Mo. App. 49, in which the court held that the provision of the statute was jurisdictional and that it was essential that the plaintiff allege in the petition that he or she was a resident of the county wherein the suit was brought. There are many cases to the effect that an allegation of residence is a jurisdictional fact and must be alleged. *Phelan* v. *Phelan*, 12 Fla. 449; *Gredler* v. *Gredler*, 36 Fla. 372, 18 South. 762; *Hopkins* v. *Hopkins*, 35 N. H. 474; *Cole* v. *Cole*, 3 Mo. App. 571; *Irwin* v. *Irwin*, 3 Okl. 186, 41 Pac. 369; *Crossman* v. *Crossman*, 33 Ala. 486, when defendant is a non-resident. The residence of the libellant in the county wherein she brings suit must appear in the libel. *Gould* v. *Gould*, 14 Pa. Co. Ct. R. 185. The court observed in deciding this case that every jurisdictional fact should appear affirmatively on the face of the record. A libel in divorce should state the county in which the libellant resides, this fact being essential to the jurisdiction of the court. *Johnson* v. *Johnson*, 3 Pa. Dist. R. 166. In *Powell* v. *Powell*, 3 Del. Co. R. 206, the court said: "It does not appear from the libel that the plaintiff is a resident of this county. As this is a point upon which our jurisdiction depends, it should not be left to intendment, but should be clearly and distinctly alleged." In case of a party seeking alimony without divorce, residence must be alleged and proved. *Miller* v. *Miller*, 33 Fla. 453. BLAND, P.J., in dissenting to the opinion in the principal case, inclines to the view of THOMPSON, J., in *Werz* v. *Werz*, 11 Mo. App. 30-31. In this case the court held that the section of the statute referred to was not intended by the legislature to declare a fact essential to jurisdiction, but was merely intended to prescribe the venue, a statement of which need not be embodied in the petition, and that if the suit is not brought in the county of the plaintiff's residence, it is pleadable in abatement, and unless so pleaded is waived. The dissenting judge in the principal case bases his opinion upon the ground that circuit courts of the state have original jurisdiction of all divorce proceedings, irrespective of the county in which they are com-

menced, and such being the case a suit brought in a county where no action could be properly commenced, the defendant waived the question of venue by pleading to the merits instead of pleading in abatement. Under GEN. ST. 1866, c. 62, § 10, providing that actions for divorce shall be commenced in the county where plaintiff resides, the complaint need not show in what county plaintiff resides. *Young* v. *Young,* 18 Minn. 90. See also *Grant* v. *Grant,* 49 Mo. App. 3.

EVIDENCE—DYING DECLARATION.—In a trial for murder a witness testified that just before the deceased died he said that the defendant had shot him for nothing. To this part of the deceased's dying declaration the defendant objected on the ground that it was an opinion of the deceased and hence incompetent. *Held,* that the dying declaration should be admitted as a whole. *State* v. *Peace* (1908), — La. —, 47 South. 28.

The present case is in accord with previous cases decided in the same state. *State* v. *Trivas,* 32 La. Ann. 1086; *State* v. *Carter,* 106 La. 408. Its reasoning, however, is opposed to the great weight of authority which holds that those parts of a dying declaration which consist of matters of opinion are inadmissible. 1 GREENLEAF, EVIDENCE (16 Ed.), § 159; 4 ENCYC. EVID. 993. Mr. WIGMORE says that the opinion rule has no application to dying declarations, but nevertheless he admits that courts in general accept the rule as applicable. 2 WIGMORE, EVIDENCE, § 1447. Some courts, however, while professedly following the above rule, have reached the same result as the present case by holding that the words, "he shot me for nothing," or other declarations almost identical, were expressions of fact and not of opinion. *Sullivan* v. *State,* 102 Ala. 135; *Gerald* v. *State,* 128 Ala. 6; *State* v. *Lee,* 58 S. C. 335; *Boyle* v. *State,* 105 Ind. 469. On the other hand, it has been held directly opposed to the present decision, that dying declarations practically identical with those in the preceding cases were expressions of opinion and not admissible. *State* v. *Sale,* 119 Ia. 1; *Collins* v. *Commonwealth,* 12 Bush. 271; *Jones* v. *Commonwealth* (Ky.), 46 S. W. 217.

EVIDENCE—OTHER OFFENSES—TO SHOW INTENT.—Prosecution for perjury. Defendant appeared as a witness on the final proof of a homestead claim, and swore falsely that the person for whom he appeared had lived continually on the land for the required time. At the trial evidence was admitted that some time before the defendant had sworn falsely on the final proof of witness's homestead claim, in regard to the length of time witness had lived on the land. *Held,* that such evidence was admissible to show knowledge, design and system on the defendant's part in furnishing evidence in support of fraudulent land claims. *Barnard* v. *United States* (1908), — C. C. A., 9th Cir., 162 Fed. 618.

Crimes committed at a former time cannot be admitted in evidence to show that the person who committed them would be likely to have committed the crime in question, but where it is necessary to prove the defendant's intent or knowledge, then evidence of other similar crimes may be introduced, provided they tend to show the existence of the intent or knowledge